

SERVED: October 16, 1996

NTSB Order No. EA-4491

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Issued under delegated authority (49 C.F.R. 800.24)
on the 16th day of October, 1996

DAVID R. HINSON,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-14588
v.)	
)	
LLOYD T. HIRAOKA,)	
)	
Respondent.)	
)	

ORDER DISMISSING REQUEST FOR STAY

Respondent has requested a stay of NTSB Order EA-4486, served September 27, 1996,¹ pending disposition of a petition for review of that order to be filed in the United States Court of Appeals for the Eleventh Circuit, pursuant to 49 U.S.C. Section 46110(a).² The request will be dismissed, for, apart from the doubtful authority of the Board to grant the relief respondent actually seeks, a stay of the Board's order would not change the status of respondent's certificate, which has been suspended since July 23, 1996.

While styled a motion to stay the effectiveness of the Board's order, respondent's motion in fact seeks to have the Board stay the effectiveness of the Administrator's emergency

¹Board Order EA-4486 granted an appeal by the Administrator from a decision of the law judge that reversed an emergency order suspending respondent's airman certificate pending his completion of a successful re-examination of his competence to hold the certificate.

²Court of Appeals review of the Board's decision on the Administrator's emergency order of suspension is available under Section 44709(f), not 46110(a).

order of suspension. However, since the effectiveness of the Administrator's order was not affected by the respondent's appeal to the Board,³ staying a decision of the Board that denied his appeal would have no impact on the suspension the Administrator ordered.⁴

ACCORDINGLY, IT IS ORDERED THAT:

The respondent's request for a stay is dismissed.

Daniel D. Campbell
General Counsel

³Although orders of the Administrator in non-emergency cases are automatically stayed by an appeal to the Board, the effectiveness of emergency orders is unaffected during our expedited review. See 49 U.S.C. § 44709(e).

⁴In these circumstances, we question respondent's apparent belief that a Court stay of the Board's order would restore his certificate to him while a judicial challenge is pursued. We note, in this regard, that respondent asserts that, under principles of exhaustion of administrative remedies, he must seek a stay here before requesting one of the Court.